3118.

SUPREME COURT OF THE UNITED STATES.

No. 97.

AUGUSTUS LORD, LIBEL'T & APP'T,

v.

THE STEAMBOAT "ISAAC NEWTON," HER TACKLE, &c., DANIEL DREW, CLAIM'T.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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United States of America, Southern District of New York, *ss.*

I, John W. Nelson, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, in the Second Circuit, this fifth day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the said United States, the seventy-ninth.

[SEAL.]

JOHN W. NELSON,
Clerk.

United States of America, Southern District of New York, *ss.*

I, George W. Morton, Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twelfth day of December, in the year of our Lord one thousand eight hundred and fifty-one, and of the Independence of the said United States, the seventy-seventh.

[SEAL.]

GEO. W. MORTON,
Clerk.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Monday, the third day of November, in the year of our Lord one thousand eight hundred and fifty-two.

Present: The Honorable Andrew T. Judson, District Judge.

AUGUSTUS LORD
v.
THE STEAMBOAT ISAAC NEWTON, her engine, tackle, &c.

August 16th, 1850.

The libellant files his libel in the words and figures following, viz.:

To the Honorable Samuel R. Betts, District Judge of the District
[2] Court of the United States, in and for the Southern District of New York.

The libel and complaint of Augustus Lord, of Portsmouth, in the State of New Hampshire, against the Steamboat Isaac Newton, whereof William Peck, now is, or lately was, master, her engine, tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause, civil and maritime, of damage.

[3] And thereupon the said libellant alleges and propounds as follows:

First. That on or about the sixteenth day of July, 1850, the said libellant, by James M. Hoyt and Sons, of the City of New York, his agents in that behalf, as this deponent is informed and believes, and therefore alleges, shipped in good order and condition on board the Schooner Hero, of East Thomaston, Maine, whereof Mark Perry was master, then lying in the port of New York, and bound for Portsmouth, five hundred barrels of flour, and fifteen hundred and sixty-four bushels of corn, the property of said libellant, to be delivered in the like good order and condition, at the aforesaid Port of Ports-
[4] mouth (the dangers of the seas only excepted) unto this libellant or his assigns, he or they paying freight for the said flour and corn, twelve and a half cents per barrel and three cents per bushel, with primage and average accustomed.

Second. That as this libellant is informed and believes, said Schooner Hero, being destined at the time of the receipt of said flour and corn of this libellant on board, on a voyage from said Port of New York, on the high seas, to the said Port of Portsmouth, was a
[5] tight, stanch and well-built vessel, of the burthen of about one thousand tons, and was then completely rigged and sufficiently provided with tackle, apparel and furniture, and then had on board a sufficient and competent crew to navigate said schooner on her voyage above mentioned.

Third. That in said month of July, 1850, and on or about the
[6] seventeenth day of July aforesaid, at about seven o'clock in the morning, and in broad daylight, just after said schooner with said flour and corn on board was hauled out of the slip, on the south side of the pier, from which said schooner had received her said cargo on the North or Hudson River side of the city of New York, near or below the foot of Liberty Street; and while the crew were engaged in hoisting the sails of said schooner, and said schooner was
[7] heading south of west outward from the City, and was slowly getting far enough out into the river, and getting under way to proceed on her said voyage down the bay, with the wind about southerly and light, and the tide running down; said steamboat, on a passage from Albany to New York, rounded from further to the westward than said schooner was in the Hudson River toward

[8] the city and toward said schooner, and run against and into said schooner, with great force and violence, so that the stem of said steamboat cut into said schooner on her starboard bow so deep, that the schooner immediately filled with water, and was capsized, and that in consequence thereof, a part of said flour was lost, and the remainder of said flour and said corn was badly damaged, and said libellant was subjected to expense in saving his said damaged property.

[9] Fourth. That it was impossible for said schooner to get out of the way of said steamboat by reason of the helpless condition she was in, notwithstanding the use by the persons in charge of said schooner, of all ordinary and reasonable precautions to avoid said collision and damage. That said steamboat might easily have avoided said collision and prevented said damage and ought to have done so, by proceeding at a slower rate of speed, or slowing or backing in time, or steering clear of said schooner, or by avoiding so close [10] a proximity to said schooner as to occasion said collision, or by taking other ordinary and proper precautionary measures which it was the duty of the persons in charge of said steamboat to have taken, and that said damage happened from the negligence, inattention, or want of proper care and skill on the part of the persons [11] navigating said steamboat, and without any blamable fault or omission on the part of the persons in charge of said schooner.

Fifth. That said flour and corn of this libellant, was worth, at the Port of New York, at the time of said shipment, the sum of three thousand seven hundred and fifty dollars and eighty-six cents, and that the damages thereto sustained by said libellants, including the [12] expenses to which this libellant has been put in saving the same in a damaged state and condition by reason of said steamboat having been run afoul of, and into said schooner, amount to the sum of two thousand five hundred and seventy-six dollars and seventy-one cents, besides interest from said seventeenth day of July, [13] 1850, and that said libellant is entitled to have and recover the same from said steamboat.

Sixth. That said damage was done in the harbor of the Port of New York, within the ebb and flow of the tide, and that all, and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court, in verification whereof, if [14] denied, the libellant asks leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Seventh. That said steamboat is now at the Port of New York, and within the Southern District of New York.

Wherefore, the libellant prays that process in due form of law, according to the course of Courts of Admiralty, and of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Steamboat Isaac Newton, her tackle, apparel, and

[15] furniture, and that all persons having, or pretending to have, any right, title, or interest therein, may be cited to appear and answer all, and singular, the matters so propounded, and that this Honorable Court would be pleased to pronounce for the damages aforesaid, and to decree such other or further relief as the Court is competent to give in the premises, and also to condemn said steam-
[16] boat, her engine, tackle, apparel and furniture, and all persons intervening for their interests therein, in costs.

AUGUSTUS LORD.

C. VAN SANTVOORD,
Proctor & Advocate.

A. UNDERHILL,
Advocate.

Southern District of New York, *ss.*

On this 16th day of August, 1850, before me personally appeared Augustus Lord, who being by me duly sworn, did depose and say
[17] that he had read the foregoing libel by him subscribed, and knows the contents thereof, that the same was true of his own knowledge, except as to the matters therein stated on information or belief, as to which matters, he believed the same to be true.

GEO. W. MORTON,
U. S. Com'r.

Libel filed August 16, 1850.

And thereupon the libellant files a stipulation for costs, as follows:

[18] District Court of the United States, for the Southern District of New York, *ss.* Filed the 16th day of August, 1852.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed in this Court, on the sixteenth day of August, in the year of our Lord, one thousand eight hundred and fifty, by Augustus Lord, against the Steamboat Isaac Newton, her engine, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamboat, her tackle, &c., may be
[19] condemned and sold to pay the demands of the libellant, and the said libellant and James M. Hoyt and Samuel N. Hoyt, sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his sureties, execution may issue against their goods, chattels and lands, for the
[20] sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dol-

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lars, conditioned that the libellant above named, shall appear and answer to the cause, &c., and abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against him by this Court, or in case of appeal, by the Appellate Court.

AUGUSTUS LORD,
JAS. M. HOYT,
SAM'L N. HOYT.

[21] Taken and acknowledged, this sixteenth day of August, 1850, before me,

GEO. W. MORTON,
U. S. Com'r.

Southern District of New York, *ss.*

James M. Hoyt and Samuel N. Hoyt, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that their place of business is 176 Washington Street; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES M. HOYT,
SAMUEL N. HOYT.

Sworn to, this sixteenth day of August, 1850, before me,

[22] GEO. W. MORTON,
U. S. Com'r.

Southern District of New York, *ss.*

The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas a libel hath been filed in the District Court of the United States, for the Southern District of New York, on the sixteenth day of August, in the year
[23] of our Lord one thousand eight hundred and fifty, by Augustus Lord, libellant, against the Steamboat Isaac Newton, her engine, tackle, &c., for the reasons and
[L. S.] causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel
[24] mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded, to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the Court respecting the same, and to

give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and ap-
[25] pear before the said Court, to be held in and for the Southern District of New York, on the tenth day of September inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegation in that behalf. And what you shall have done in
[26] the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable Samuel R. Betts, Judge of the said Court, at the City of New York, in the Southern District of New York, this 16th day of August, in the year of our Lord one thousand eight hundred and fifty, and of our Independence, the seventy-fifth.

J. W. METCALF,
Clerk.

C. VAN SANTVOORD,
Proctor for Libellant.

[27]

In obedience to the within Monition, I attached the steamboat therein described, on the 21 day of August, 1850, and have given due notice to all persons claiming the same, that this Court will, on the 10 day of September inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

H. F. TALLMADGE,
U. S. Marshal.

Filed 10 Sep., 1850.

Southern District of New York, United States District Court. Augustus Lord *v.* the Steamboat Isaac Newton, her tackle, &c. Mo-
[28] nition ret'ble Sept. 10, 1850. C. Van Santvoord, Proctor for Libellant. Filed Sept'r 10, 1850.

District Court of the United States, for the Southern District of New York. Filed the 19th day of August, 1850.

Stipulation entered into pursuant to the rules of practice of this Court.

Whereas a libel was filed in this Court, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty, by Augustus Lord, against the Steamboat Isaac Newton, her

engine, &c., for the reasons and causes in the said libel mentioned,
[29] and praying that the said steamer, her engine, &c., may be condemned to pay the damages sustained by the libellant, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars, may issue against their
[30] goods, chattels, and lands: And whereas, also, a claim is to be filed in said cause by Daniel Drew.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are hereby bound, in the sum of two hundred and fifty dollars, conditioned that the claimants above-named, shall pay all costs and expenses which shall be awarded against them, by the final decree
[31] of this Court, or upon an appeal, by the Appellate Court.

ROBERT L. CROOKE,
ROBERT W. KELLEY.

Taken and acknowledged, this 19th day of August, 1850, before me,

GEO. W. MORTON,
U. S. Com'r.

Southern District of New York, *ss.*

Robert L. Crooke, and Robert W. Kelley, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

ROBERT L. CROOKE,
ROBERT W. KELLEY.

Sworn to, this 19th day of August, 1850, before me,

GEO. W. MORTON,
[32] U. S. Com'r.

District Court of the United States, for the Southern District of New York. In Admiralty. Filed the 19th day of August, 1850.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed on the sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty, by Augustus
[33] Lord, against the Steamboat Isaac Newton, her engine, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamboat, her tackle, &c., is in the custody of the Marshal, under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellant, it has been agreed to discharge the said steamboat, &c., from custody, on executing stipulations for costs and value, the latter in the sum of

five thousand dollars, as appears from said consent, now on file in
[34] said Court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned, shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon
[35] notice of such order or decree, to , Esquire, Proctor for the claimant of said steamboat, &c., abide by and pay the money awarded by the final decree rendered by the Court, or the Appellate Court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

C. NEWTON,
ROBERT L. CROOKE,
ROBERT W. KELLEY.

Taken and acknowledged, this 19th day of August, 1850, before me,

[36] GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.*

Robert L. Crooke, and Robert W. Kelley, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

ROBERT L. CROOKE,
ROBERT W. KELLEY.

Sworn to, this 19th day of August, 1850, before me,

GEO. W. MORTON,
[37] U. S. Commissioner.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the City of New York, on Wednesday the twenty-first day of August, in the year of our Lord one thousand eight hundred and fifty.

Present. The Honorable Samuel R. Betts, District Judge.

The Steamboat Isaac Newton, her tackle, &c.
ads.
[38] Augustus Lord.

On filing a consent to stipulate and the terms being complied with, ordered that the vessel be discharged from custody.

Order filed August 21, 1850.

Sept. 21, 1850. The claimant's proctor files his answer in the words and figures following:

District Court of the United States, for the Southern District of New York.

The answer and claim of Daniel Drew of the City of New York, one of the owners of Steamboat Isaac Newton, for himself and the other owners of said steamboat, to the libel and complaint of
[39] Augustus Lord of Portsmouth, in the State of New Hampshire, against the Steamboat Isaac Newton, her engine, tackle, &c., apparel, and furniture.

This respondent, saving and reserving to himself all manner of exception and advantage that may be had and taken to the manifold errors, uncertainties, and insufficiencies in the said libel contained, for answer thereunto, or to so much thereof as he is advised it is
[40] necessary or material for him to make answer unto, answering says:

First. That he has no knowledge and no information save from the said libel, of the matters alleged in the first article of said libel, and cannot state as to his belief or otherwise, whether the same are true.

Second. That he does not know whether or not the said Schooner Hero, was at the time for that purpose in the second article of said libel alleged destined on a voyage from the port of New York, on the high seas to the port of Portsmouth, in the State of New Hampshire, or on what voyage or to what port she was destined, nor does he know the burthen of said schooner, nor whether or not she was then completely rigged, or sufficiently provided with tackle, apparel, and furniture, but he denies upon information and belief that she was then a tight, stanch, and well-built vessel, or had on board a
[42] sufficient and competent crew to navigate her on the voyage, in the said second article alleged or any voyage.

Third. That he has no personal knowledge of the matters in the third and fourth articles of said libel alleged, but has been informed and believes that the same are in great part incorrectly and untruly
[43] alleged, and that the real facts and circumstances of and in respect to the collision in the said third and fourth articles alleged are as hereafter in this his answer stated, and upon information and belief he denies each and every allegation in the said third and fourth articles contained inconsistent with or varying from the allegations hereinafter made.

Fourth. That the said Steamboat Isaac Newton belongs to a
[44] regular line of steamboats, plying between New York and Albany on the North River, for the conveyance of freight and passengers, leaving one of those places in the evening of one

day, and arriving at the other in the morning of the next day thereafter; that, as this respondent is informed and believes, the said steamboat, on the seventeenth day of July, in the year one thousand eight hundred and fifty, between the hours of seven and a half and
[45] eight o'clock in the morning, arriving at New York from Albany in one of such, her regular trips, and rounding the same distance out in the river, made for her dock on the south side of Pier No. 16, in the North River, between Liberty and Courtlandt Streets, the same being her regular, well-known and advertised place of landing and receiving passengers and freight; that at the time
[46] aforesaid, there was directly abreast or in front of such her dock, and some little distance out in the river a steamboat tow, consisting of a large number of vessels and boats, and there were also many other vessels near by, so situated in respect to such dock, that there was but one way or space left open by which the said steamboat could then reach her said dock; that the said steamboat rounded to, and made for her said dock through such
[47] open way or space, the same being between a brig and ship lying out in the river below said dock, and a few hundred feet distance from each other; that when the said steamboat was passing between the said brig and ship, moving slowly through the water on her way to her said dock, the said Schooner Hero was first seen by those in charge of the said steamboat, heading directly on
[48] to the said steamboat; that the said schooner then had her mainsail and jib up, and all of the foresail except the peak, and the crew on board of her were swaying that up; that those in charge of the said steamboat immediately upon seeing the said schooner, hailed her and asked those on board of her, where they were coming, or where they were going to, and at the same time stopped and backed the said steamboat; that at the time of such first
[49] hail there was no one at the helm of the said schooner, but immediately thereafter a man went from the foreward part of the said schooner to her helm, and he was told by those in charge of the said steamboat to put the helm of the schooner hard down, which he did, but soon and just as the said schooner was beginning to luff, he shifted her helm and hove it hard up; that thereupon those in charge of said steamboat told him to put his helm
[50] hard down and keep it there, which was done, but soon after the said steamboat and schooner came together, the steamboat striking the schooner a light blow a few feet from her stern; that as soon as the said schooner was seen, the said steamboat was stopped and backed, and continued backing until they came together, but immediately thereupon she was started ahead to clear her of said
[51] ship, which was then under her stern, and which she was in imminent danger of running afoul of by reason of her being so stopped and backed as aforesaid, to avoid collision with the said schooner, and as soon as she had gone ahead far enough to clear the

said ship, she was again backed, and got free from the said schooner;
[52] that all of those in charge of the said schooner except one immediately after the collision left her, and made no efforts to save her or the property on board of her, although they were requested by those in charge of the said steamboat to get her into one of the slips near by, which they could have done, and thereby have saved great loss and damage; that before and at the time of the said collision, there was a snug breeze from the southeast, and the tide ebb running pretty strong, and the said schooner had sufficient head-
[53] way to mind, and did mind her helm; and that if those in charge of the said schooner, even at the time of the second hail hereinbefore-mentioned had put her helm hard down, and kept it there, as it was their duty to have done, the collision would have been avoided, or very slight if any damage would have happened thereby.

[54] Fifth. That before and at the time of the said collision, as this respondent is informed and believes, the said steamboat was in the prosecution of her lawful voyage, and was skilfully, carefully, and properly managed, and those in charge of her did everything it was possible for them to do to avoid a collision with the said schooner, but that the said schooner was old, rotten, and unseaworthy, and had not of her competent hands or a competent master to manage and navigate her safely and securely; and that the said
[55] collision was occasioned by the negligence, carelessness, unskilfulness, and inattention, or the wilful misconduct of those in charge of the said schooner, and not from any fault, omission, or neglect of those in charge of the said steamboat.

Sixth. That he has no knowledge and no information save from the said libel, as to the loss of a part of the flour or damage done to the
[56] remainder of the flour and corn, in the third article of said libel alleged, or as to any expense to which the said libellant was subjected in saving the same as therein alleged, and cannot state as to his belief or otherwise whether the said allegations are true.

Seventh. That he has no knowledge, and no information save from
[57] the said libel, as to the matters in the fifth article of said libel alleged, and cannot state as to his belief or otherwise, whether the same are true.

Eighth. That he admits that the collision took place in the harbor of the port of New York, and within the admiralty and maritime jurisdiction of this Honorable Court; and that the said steamboat was at the time for that purpose in the seventh article of said
[58] article alleged, at the port of New York, and within the Southern District of New York.

Ninth. That all and singular the premises are true as herein alleged.

Whereupon, the said respondent prays, that this Honorable Court

would be pleased to pronounce against the libel aforesaid, and to condemn the said libellants in costs, and otherwise law and justice to administer in the premises.

HENRY B. COWLES,
Proctor for Cl't and Res't—D. Drew.
GEO. C. GODDARD,
Advocate.

Southern District of New York, *ss.*

[59] On this 21st day of September, one thousand eight hundred and fifty, personally appeared before me, Daniel Drew, subscriber to the foregoing answer, who, being sworn, did expose and say that he had heard read the foregoing answer subscribed by him, and knew the contents thereof, and that the same was true, of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believed it to be true.

J. W. NELSON,
U. S. Com'r.

[60] Answer and claim of Daniel Drew. Filed Sept. 21, 1850.

Sept. 23d, 1850. The libellant files the replication in the words and figures following.

United States District Court, Southern District of New York, in Admiralty.

[61] The replication of Augustus Lord, libellant, to the answer of Daniel Drew, the respondent, to the libel of the said Augustus Lord, against the steamboat Isaac Newton, her tackle, apparel, and furniture, and against all persons intervening for their interest therein.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says, that he will aver, maintain, and [62] prove his said libel to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Daniel Drew is uncertain, untrue, and insufficient to be replied unto by this repliant. Without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently [63] replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as the Honorable Court shall direct, and humbly prays, as in and by his said libel he has already prayed.

C. VAN SANTVOORD,
Proctor for Libellants.

Replication. Filed Sep. 23d, 1850.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the twenty-third day
[64] of October, in the year of our Lord, one thousand eight hundred and fifty-one.

Present, The Honorable Andrew T. Judson, District Judge.

AUGUSTUS LORD
v.
The STEAMBOAT ISAAC NEWTON, Her tackle, &c.

This cause being called in its order on the calendar. Ordered hearing.

U. S. District Court, Southern District of N. Y.

JONATHAN CROCKETT & others
v.
The STEAMBOAT ISAAC NEWTON, her tackle, &c.

[65] AUGUSTUS LORD
v.
The same.

Case to be transmitted on Appeal.

The above-entitled causes came on to be heard together by consent of the parties, before the Honorable Andrew T. Judson, sitting as District Judge in the District Court in and for the Southern District of New York, on the twenty-third day of October, 1851, and
[66] the following testimony was taken on the said twenty-third day of October, and on the twenty-fourth and twenty-fifth of that month, in said District Court before said judge, under an arrangement between the respective parties to the above entitled suits, that the same should be read in evidence in either of said suits, so far as applicable.

Mark Perry, a witness called for the libellants and sworn, testified: I was the commander of the Hero, 16 July, 1850, and previous; had
[67] been in that service as captain about 25 years, not in the same vessel, but vessels employed in the coasting trade; at the time the Hero received her cargo she was lying the south side of pier 15 in the North River, stern out, bow in towards the city; she had 520 barrels of flour and 1564 bushels corn on board; 500 barrels of the flour and all the corn were from Hoyt & Co., assigned to
[68] Augustus Lord; a bill of lading is here produced, and he says it was signed by me (the following is a copy):

"Shipped in good order and well conditioned, by James M. Hoyt & Sons, on board the schooner called the Hero, whereof Perry is master, now lying in the Port of New York, and bound for Portsmouth, to say, five hundred barrels flour and fifteen hundred sixty-four bushels corn, being marked and numbered as in the margin, and
[69] are to be delivered in the like good order and condition at the aforesaid Port of Portsmouth (the dangers of the seas only excepted), unto Mr. Augustus Lord, or to his assigns, he or they paying freight for the said flour and corn, twelve and a half cents per barrel and three cents per bushel, with primage and average ac-
[70] customed. In witness whereof the master or purser of the said vessel hath affirmed to 3 bills of lading all of this tenor and date, one of which being accomplished the others to stand void. Dated in New York, the 16th day of July, 1850.

MARK PERRY.

Mill Brands.

Railroad, .	207
Erie Mills, .	243
Harvey, .	50
	500

We finished loading the morning of the 17th July; we were bound to Portsmouth, New Hampshire; I commenced about sunrise to haul
[71] out, we got a line to lower end of the dock, pier 15, and hove her out, we were some time hauling her out, as she was on the bottom; wind light, the tide was running ebb some; we came round pier 15 stern foremost, jib and mainsail up, stern struck pier No. 16, we took poles and oars and shoved her off; we were then heading about west towards Jersey; the crew commenced hoisting foresail after
[72] we shoved off; while hoisting that we were working out; can't tell exactly how far off we had got at time of collision, but about opposite pier 12; I can't tell how far out; I should think 30 rods; there were vessels at the end of the piers below pier 15; at the time they struck us the men had not got the foresail up; when working out I was at the helm; I had been there all the time from the
[73] time we left the dock; when I first saw steamer she had got round the stern of an English brig, heading eastward towards us; before that mate said there was a steamboat coming towards us; I said I see her, and my helm was hard down; the mate was forward with the crew; I saw her before I heard the cry from the mate; boom was starboard; put the helm hard starboard (becket on); hard down
[74] means hard starboard, that would turn the boat to the southward; I kept the helm hard down; I ran forward when the boat was within ten feet of us; the mate then first ran aft; I left the wheel hard down in the becket when I ran forward; I heard a hail

from the steamer to put helm hard down; it was hard down before this hail from the steamboat, and I kept it and left it there; I hailed
[75] the steamboat to back his boat, or he would be into us; I gave him no other hail but that; the boat came into us; she first struck the bowsprit on the starboard side, light blow, then forward came right into the bow by the catshead, went into us six feet, and two or three feet below our water line; the steamboat backed out of us, and told me to go into the dock; I asked him how he supposed I could do so when she was sinking; I tried to get her in, but knew I
[76] couldn't; I let the mainsheet out to effect this object; a Hell-gate pilot came on board, and took the wheel; he told me to get out all I could, as she would go down immediately; she went over on her side and left a little of her side out; her larboard quarter out; she drifted down below the Battery; I took the boat and went ashore
[77] to get assistance, and sent my crew back to the schooner; the pilot being still on board; he got a steamboat hold of her; he got her in off the Battery; his name was Gershon; the anchor I believe brought her up at the Battery; when steamboat struck her the anchor fell down; she lay there on the water submerged; we could not get at
[78] the anchor; she was so much under water and pitched down by the head; she had a chain cable; couldn't get near it to cut it; I went to our agent; he engaged a man to get her to screw dock; she went down off pier 3, East River; a wrecker got a steamboat hold of her; he tried, broke all his lines; a gale came on; her cable broke; she was then opposite the dry dock; she sunk near opposite the shot tower.

Being cross-examined: I reside in Rockland, Maine; I have sailed
[79] the Hero about two years; I have known her, I don't know how long; she was brought from Bridgeport, Connecticut; can't tell how long I have known her; she had four lower sails, gaff, staysail, and topsail, mainsail, foresail, jib, and flying-jib, at the time of collision; there were four of crew besides myself, a mate, two
[80] men, and steward; the steward was some 15 or 16 years old, the others 18 to 20, the mate 22 or '3; when I shoved off from pier 15, I had up mainsail and jib, and from pier 16 the same; shortly after we shoved off from pier 16, we began to get up foresail; soon as we got clear, so we could hoist it forward; there were four of the crew engaged in hoisting up the foresail; it was not fully up when the collision took place; they were hoisting the peak
[81] just before the collision, and stopped by reason, or by fear of the collision; before hoisting the foresail, she was heading to the southward and westward; I should judge, the steamboat had got round the brig's stern when I first saw her; the brig lay in the stream nearly opposite pier 13; won't be positive, near ½ across the river; been in coasting trade, and in the habit of coming to this city, and lying on both sides of the city; habit of lying lower
[82] part of the city, at Hart's Basin; many a time just above Courtlandt Street; lay at pier 15, loading some four days.

I didn't own any part of Hero, nor her cargo, except 20 barrels of flour; first began to haul out at sunrise; collision about 7 o'clock, A. M., as near as I could judge; I can't tell what time of tide it was.

Re-examined: Hero was 99 tons and a fraction; I had one extra
[83] man from what I generally have working his passage; there was a light breeze, very light; hardly enough for steerage way.

Cross-examined again: I think the wind rose with the sun; it was calm, early; sprung up before sunrise to a light breeze, little more when I got out.

Lewall Getchell, for the libellant, sworn, testified: I was mate of Hero at the time of the collision; when she received her cargo, she lay at pier 15, south side, heading to the dock, about sunrise; was on
[84] bottom; when we began, we hove a line on end of pier 15, and hauled her out stern forwards; the eddy tide set us up to pier 16; poles and oars shoved her off of that; we had our mainsail and two jibs up; when we got clear, we got ready to hoist the foresail after that; I was forward getting under weigh; we were getting up the foresail; that was not entirely up at time of collision; throat was up, peak down, at time of collision, off pier 12,
[85] about ⅓ of the way across, heading west-southwest at the time of collision; course of the river, I think, about north and south; when I first saw steamboat, she was coming down the river; English brig at anchor between us; she was coming straight down the river; she took a sheer round the brig, and straight for us; hit us on the starboard bow, struck us, broke cathead, came in
[86] us six or seven feet, cut us down about the same distance, and below the water-line; saw the cut afterwards; timber was sound; one beam was new; captain was at the wheel from the time we shoved out from pier 16, all the time, with the exception of about a second before she struck; I was then leaving to go aft; I went aft previous to the collision, looked at the wheel, at the helm, found the lee-becket on; helm was hard down, hard a-starboard; the
[87] becket would keep it hard down; the wheel is lashed by becket; wind was southwest, and very light, not enough for steerage-way; I hailed steamboat first; heard hail from her, after I hailed; I told him to have his wheel hard up, or he would be into us; Hero filled, and capsized after the collision; all under water, except a little of the larboard side.

Being cross-examined. We were one-third across the river; I think the brig lay one-half way across the river; we might have been 300
[88] yards from the brig; I saw steamboat coming down on a straight course down outside of the brig, up the river, a little above the brig; I spoke to Captain Perry when I hailed her; I didn't know where she was going to, she was so far below her pier; she took a circle round till she got in line with us, and then took a straight course;

from the time of beginning to hoist foresail, all the crew were en-
[89] gaged in it; the Captain didn't come and give a lift; all the crew hoisting at foremast; we were each side of the foremast, nobody was forward.

Re-examined. I was in position to see the Captain, and did see the Captain at the wheel all the time from coming out from pier 16; all went aft, I at head; there was nothing we could have done to avoid the collision; the steamboat stopped her wheels, but continued
[90] to get ahead; didn't stop her wheels until after I hailed her; fore-boom hung by top-lift while hoisting, and off on the starboard side; I was forward of it and of the foresail on side of the foremast, and forward of the foresail.

Marcellus Getchell for the libellants, sworn, testified; I was hand on the Hero; we pushed out from pier 16; I assisted; I have heard the testimony of Lewall Getchell, and I agree with what he said;
[91] Captain at wheel from the time he pushed out; I agree to all except about the brig; I didn't notice her.

Being cross-examined. I have been coasting about six years; the steamboat, when I first saw her, was coming head right towards us; I saw her before the hail.

Hartson Hallett, for the libellant, sworn, testified: In July, 1850, I was Captain of the Barge Lady Van Rensselaer; I saw the col-
[92] lision; I was on the end of the north pier of Hart's basin, pier 19; they were nearly in range with Gibbet Island; they were at collision nearly one-third of distance across the river, I should think about abreast of foot of Cedar Street (pier is No. 14 there), wind was southwesterly, light; tide was running ebb; saw them come together; I didn't notice vessel at anchor; there was nothing to the westward of them that I saw; the steamboat could have stopped, I
[93] presume, and could have gone to the westward of her; I don't recollect of there being anything in the way to the westward.

Being cross-examined. I noticed a number of vessels at anchor below; some distance off, there was a steamboat tow making into Hart's basin, to land a boat; didn't notice the number of boats; there were more than four.

William Groshon for the libellants, sworn, testified; I am a Hell-
[94] Gate pilot; I went on board Hero, went on board after she struck; she was in a sinking condition; didn't see collision; she was helpless, nothing could be done more to prevent her sinking; she drifted down below Battery, I went ashore to get a tow-boat; got a boat; she drifted, towed her to the Battery; it was impossible to get up her anchor; she had pitched ahead; the cathead broke and
[95] the anchor went over; left her in charge of others, a wrecker, I believe, and went off at night; she was off about pier 12 when I got her; the steamboat and schooner were together when I

saw them; I was rowing up, back towards them, and didn't see collision; came immediately on board the schooner; she couldn't have been got into slip near by; we tried, we used our best endeavors
[96] to do it; couldn't be done; she was down flat; Captain and all hands helped me; ebb tide, wind south-southwest; I was below in small boat rowing up; the wind was very light; one side out two feet; sails, mast lying in water, so sails couldn't be got off.

The libellants then rested.

Friday Morning, October 24, 1851.

The claimants then called

Peter A. Bradt, pilot of Steamboat Isaac Newton: Been pilot of her over two years; two years, July last; been pilot of steamboats nine
[97] years; sailed different sloops eight years or more, to and from the port of New York; pilot of Isaac Newton, July, 1850, from Albany to New York, night line; left New York at six o'clock P. M., left Albany in the evening, sometimes earlier and sometimes later, depending on the arrival of the western cars; usually got into New York between 6 and 7, sometimes as late as 8 o'clock; on the morn-
[98] ing of the 17th July, got in at between half-past seven and eight o'clock; her berth was the south side of Courtlandt Street, south side of pier 16; it was lying full of vessels about the pier, and in range of where we wanted to come, more than usual; a steamboat with a large tow lay about abreast our dock; large tow, can't tell the number; she reached from lower part of our dock to Hart's basin; I rounded to a little below our dock, rather farther
[99] down than I usually go, on account of vessels lying there; the only opening I could see was under a brig's stern, and ahead of two ship's bows; the ships were below; when I got in near to the brig, I came round the brig and stopped and headed up alongside the brig, less than the width of the boat from her; I then discovered the schooner had headed up, and stern slewing in shore; I had straightened up alongside of the brig, stern swung in shore,
[100] then I first saw schooner; wind southeast, or little off town; snug little breeze, so that vessel could go up against tide; tide ebb, I think, near the first of the ebb, perhaps one hour and a half; I saw vessels go up, a sloop went up past close in, boom over larboard quarter; schooner had her mainsail, jib, and foresail all up but peak, I don't know as the foresail was quite up at the throat;
[101] I saw some men swaying up foresail, think it was peak; I didn't see any one at the helm until after I hailed them; as soon as I discovered schooner, I hailed first; I hailed to know how they were coming or wanted to go; didn't hear any answer; sung out to them to put their helm hard down; I didn't receive any an-
[102] swer; I saw a man leave the foresail and run aft, and saw him at leeward of the boom, he put it down but altered it

again; she payed off, but minded her helm; I sung out to him to put his helm hard down and keep it there; can't say whether it was a wheel or tiller; when she come near, I thought I saw she had one of these travelling wheels; I had the steamboat stopped and backed
[103] when I discovered schooner; the engine worked back; I couldn't go back on account of ship under our stern; got as near still as I could; we came together; our stern took the schooner on the starboard bow, broke plank in between the two timbers; I gave her a turn or two ahead to clear the ship at stern after we came together; after separated, first thing I noticed, the people on board
[104] of the schooner jumping in the small boat, soon after getting clear; as we got clear, Capt'n Peck told them to start sheet and run her into the slip; they didn't do so; I couldn't tell how long it took us to get to the dock and fast to the slip; my mind was engaged with my boat; after got boat in, walked forward and saw her canting down on her side; I couldn't have done anything different from what I did to clear her after I discovered her; had the
[105] schooner kept helm hard down when I first sung out to them, she would have shot down alongside of us, and we would have avoided hitting her on the hull with our stern, would have brushed along, hit rail, perhaps; her boom was off starboard side; heading as she did, boom couldn't be so; if wind west-southwest, she couldn't have got there without making another stretch;
[106] she was out 150 to 175 yards, we were something more than the length of our boat from her when I first discovered her, some 400 feet; I didn't hear any report from the blow, only a squash, strong as a pumpkin; she was quite an old vessel; there was no mark on our stern but dirt and rotten wood; no bruises, copper not broke on the stern inside; inside ends of piers with ebb tide, water is slack; if out there without steerage-way, she would drift against dock.

[107] Being cross-examined. He had stopped his boat before he attempted to enter this passage between the brig and ships, enough to lose all her way; pretty much came in with moderate way; I could not get her in the right shape; whether this boat, with little way, steers better, depends upon circumstances of what kind or place I want to get her in one of the docks above or below; the slip we were in is on piles; the tow was a down tow; was heading up the river; didn't see her till then; I supposed I could
[108] come in there; I could come in the same passage she could come; the brig was at anchor 175 or 200 yards from end of dock, not near the middle of the river; I don't know how wide the river is there; the ships were also at anchor; ships 300 feet stern of brig; don't recollect the brig had any sails up; ships were perhaps 40 or 50 yards apart, my measurement of their distance apart; the
[109] brig was off against between Albany and Liberty Streets; we want rather more than half the river to round to, some

time shorter turns than others; don't always round to, did that time; pilot-house is 35 feet from water, about 75 feet from bows; I stood in house; no look-out except what was kept in the pilot-house; Newton is 345 feet long.

Re-examined. Pilot house all clear to bow, no tophampers.

[110] Cross-examined again. Forward deck used for freight and passengers; it is a smoking place.

Re-examined again. Clear view.

William H. Peck for claimants, sworn. 5 years Captain Isaac Newtown, about 20 years as steamboat and sailing captain; for 15 years on both rivers.

It was here admitted by the libellants, that the regular berth of

[111] the Isaac Newton, was on the south side of pier No. 16 in the North River; that that was her advertised place of receiving and discharging her passengers and freight, and that she belonged to a line of night boats, leaving New York and Albany in the evening, and arriving at their places in the morning thereafter.

My statement would not be different from Bradt. I was on the upper deck, the hurricane deck, post usually taken on coming into

[112] port; there were 100 sail anchored between Courtlandt Street and the Battery. I saw a space between the ships and brig, the only space I saw we could get through; there was a tow in neighborhood of Courtlandt Street, large tow; we kept near the Jersey shore; rounded to; slowed her when we commenced swinging; stopped her just before we got to the brig, then backed her engine; we were heading round the stern of the brig when I discovered the schooner about half the width of the Newton from the

[113] brig, about 40 feet; we were coming round, swinging up; I remarked to Mr. Bradt, the schooner would come in contact with us, if she kept the course she was on; I told him to hail the schooner, and tell them to put her helm hard down, he did so; didn't hear any answer; I stepped aft, he hailed her twice I think; did not notice any one at the helm of schooner when we first hailed, nor at any time; she had her mainsail and jib up, swaying up fore-

[114] sail; I stepped aft; saw we were coming in contact with one of the ships; we were drifting under the ship's bows, under our stern; I called to Mr. Bradt to go ahead just before the collision, he remarked that he couldn't go ahead then. I stepped forward; she didn't go ahead till after he struck; we were as close to ship as could be and clear her; it was necessary to go ahead for the preservation of our boat; wind southeast, blew off the city;

[115] booms of schooner, starboard ebb tide, snug sailing breeze; after we discovered the schooner, nothing could be done by steamboat that was not done. If schooner had luffed at the time she was hailed, I think she could have cleared us; didn't take notice how high the brig was out of water; schooner pointing about south-southwest, when discovered; pilot-house from main deck is

[116] about 25 feet; when we come into port, there is one or two men ahead when there are not deck hands on the look-out; there was this morning; after collision, 20 minutes to half an hour before schooner careened down; it was after we got into slip and had made fast; I think I hailed them, and asked them why they didn't square away and go into the slip; I think their answer was, they didn't know what to do; they got into the small boat; they got [117] things out of the cabin and passed them into the small boat; she drifted about; no one there to take charge of her; I think could have got her into the slip; I think schooner couldn't get out of slip with a southwest wind; the way they were heading when I first saw them without steerage-way, I think they would have drifted against the dock; her booms couldn't be starboard with a southwest wind.

Being cross-examined. Vessels reached all the way up to Cortlandt [118] Street; there were vessels at anchor above the Bay, independent of the tows; the men forward were not put there for the purpose of lookout; no particular purpose except duty; there were men at the bow getting the lines ready; I couldn't say for certain this morning; can't say who; I didn't order anybody there to look out; it never has been the practice to place anybody there on the lookout except in a fog. I think there was wind enough after the [119] collision to stem the tide and get into the dock; generally go by the point of the compass, and go by the compass when I say wind was southeast, I mean southeast by compass; it blew a little off shore from the Battery.

Re-examined. The duty of hands forward, is to get the lines in readiness, nothing special else; Michael Bunt was a hand on board; I think he was in the wheel-house at that time. The Isaac Newton carried the United States Mail; the great northern and western [120] mails from Albany; didn't feel any jar at all at the collision; the stern was dark, black, and dirty; I looked, no bruises on it.

Francis Teson sworn. Steamboat pilot all my life, on water 15 years. I was pilot of Steamboat Troy, 1850; I remember the morning of collision; I didn't see them come together, but just as they cleared each other; came in that morning from Troy; the Troy night [121] line; we got in before Isaac Newton, probably an hour or so; number of vessels at anchor below Cortlandt Street; the majority, some above; we came in head down; our dock is above short pier; came in earlier; these vessels lay there when the Newton came in same as when we came in; the wind was southeast that morning, and at that time snug little breeze, and sloop going by against tide, think two miles an hour; when the Newton and Hero [122] got clear, this vessel was going up by our slip; I don't recollect seeing the tow; I saw the schooner after she got to the dock; went on board afterwards; noticed where the collision

had been; should think Newton might gone in two feet or two and a half on deck, not so deep below; schooner looked as though she was of pretty good age; after collision, the schooner came round to east, head up the river, stood up quite aways; we wondered they
[123] did not make sail, and run her into the slip; I should think it half an hour before she careened, the Newton backed in slip; I don't think there would have been any trouble in getting her into the slip with the ebb tide and west wind.

Being cross-examined. Didn't go aboard until after she had been boarded up, and had discharged her cargo.

John Mead sworn. Been steamboating 10 years; I was on board Steamboat Troy, deck hand; I saw the collision from hurricane
[124] deck of the Steamboat Troy; she lay at foot of Cortlandt Street, next pier above the Newton's; saw the schooner going down and the steamboat coming up, the Newton making a turn or two back; I saw some one run from forward aft and put the schooner's helm down; didn't see anybody there before; that I then saw him shove the helm up to keep her off; I think she felt it; it changed her course; wind south and east; she headed about south-
[125] west; booms off starboard side; Newton's engine was stopped when they came together; just before going back boat was about stopped. If helm had been hard down and kept there, would have cleared the Newton, boom might have rubbed her side.

Being cross-examined. I was on hurricane deck of Troy, forward; when the helm was put down the steamboat was backing, when eased up was still backing; I can't tell how far off.

Henry Hafard, sworn. I was pilot of Troy; been on steamboats
[126] about 8 years, and sloops, &c., 18; second pilot of Troy, 1850; saw them first parting from each other; wind east of south, hauled off the town, the land; such a breeze as vessels could go against tide; wind enough to work a vessel; saw one vessel go by slip just after they struck, near the dock, one hundred feet from end of the pier; there were a great many vessels at anchor that morning
[127] from where we lay and above, some down as far as I could see to Battery, &c.; twenty minutes or more before she careened; she wore round first and went up the river some; her main sheet slacked off and peak down; about held her up against tide and didn't go ahead much. If they had attended to the vessel instead of their small boat and clothing, I think could have brought her in
[128] in 15 minutes. They got the small boat to quarter, and were putting I should think clothes and trunks I thought from where I stood.

Being cross-examined. More vessels below than above Cortlandt Street.

William B. Nelson sworn. I am a sailmaker at 100 West Street, for 13 years; I saw the collision; I was in shop window front fourth

loft, between Liberty and Cedar Streets, below the berth of the Newton; saw the steamboat coming in, schooner standing off; I
[129] thought the schooner ran into the steamboat. If the schooner had put helm down, would have avoided the accident; wind east-southeast, about enough to fill sails and stem current, one on this side, and one on Jersey side about the same time; been one voyage south; can sail a small vessel or boat, and have done it frequently; I didn't see any body to the helm of schooner.
[130] I saw a couple of men at foremast; I didn't at any time see anybody at helm of schooner; Newton's engine was stopped at the time they came together; a slip and brig off pier 12, I should think below; nothing done on board steamer, except to stop her engine; saw the steamboat round to between a brig and ship, pointing to the dock; didn't notice anything but the ship and brig, and the tow that was there, 4 or 5 boats; the steamboats on next
[131] pier; bad view of tow, so that I couldn't see the number of boats of tow.

Being cross-examined: Piers, from 2 to 400 feet long, about 225 feet, are above 300 feet; just built between Albany and Cedar Streets; saw no vessels at the end of the pier; my shop in the middle of the block; no houses in front.

Hiram Hallenbeck, sworn: I have been in the boating business 18 years; most part of time in steamboats. In 1850 I was wheelsman of Isaac Newton; was at the wheel that morning; first saw schooner
[132] just as we rounded to, under brig's stern; some vessels there; generally is from Cortlandt Street all the way to the Battery; we were slowed before we see the schooner, getting our head up the river; we got her head up the river; we stopped as soon as we see the schooner close into the brig; when we first see her, we stopped; Bradt hailed her (so Bradt says); can't say as to hail the
[133] second time; he told them to put her helm hard down; nobody to helm; some of them ran from her foresail aft, and went to helm; I don't know whether it was a standing or running wheel; they shifted it; she minded it; wind hauling off east shore; it didn't appear to be much of a jar, when we came together; I heard Captain Peck speak to them after got apart; asked them why they didn't try to get in dock; we went to the dock, backed in, got nicely
[134] fast, half an hour; the schooner didn't careen till after that; if helm had been down and kept there, would have cleared us, without injuring anything scarcely; the steamboat did all could do, after seeing schooner; we could do nothing more than we did; when we struck, we were head up the river, opposite the brig at anchor; I think, *if* anything, we had sternway on her, wind enough to shove a
[135] vessel through the water, and give her good steerage-way; I didn't notice any vessels going up.

Being cross-examined: Saw two ships astern steamboat; did not offer any line to help schooner to shore.

Re-examined: Effect of steamboat going against ships; effects serious.

Peter A. Bradt recalled for claimant: If the after part of the steamboat had hit the ships below, she would have swung round, become unmanageable; the jib-boom might have gone through the boil-
[136] ers, and the consequences to steamboat and passengers might be fatal.

The defendants rest for the present, and the libellants call:

Richard Poillon: I am a ship-carpenter, and repaired the Hero; saw the break; 7 streaks of plank, outside, were broken; 7 deck plank, besides plankshear stove in, rail, bulwark, and one beam, 5 timbers, 5 stanchions, great deal of smaller work also; the wound
[137] showed shape of sharp vessel, larger at top than at bottom; the steamboat must have struck about across the schooner at right angles; the plank and timbers sound; vessel was old, and looked black, but all sound; timbers good size, timbers broke off were 10 by 6 inches deck plank, average 7 inches; she was cut about 5 feet on the deck, 7 of the plank, plankshear about a foot wide, side bends cut were about 8 inches, seven of them cut down between
[138] 5 and 6 feet below the plankshear wound; was four or five wide at plankshear; saw her once in river before; her cargo out; not on board of her till after her cargo was out; wales four inches thick; I think bottom plank below bends 2½; deck plank 2 or 3.

William H. Story: Master warden of port of New York; surveyed Hero in 1850. (Survey shown). This is my survey; it is true;
[139] under official seal of the office; surveyed the vessel; called to her when in North River; I found the vessel with a hole in her bow; the deck-plank broken through, and plankshear, bends, and side-plank broken; timbers were sound wood and so the plank; saw no rotten wood about her; sides were bruised two feet wide; 5 timbers broken, 5 stanchions, one beam, 3 knees, 7 streaks of plank, and some deck plank, and one knee on larboard attached
[140] to the broken beam; wind southwest, tide ebb, I should think she could get out; ebb tide, best to get off with such a wind; not so well on flood tide; shore southwest by south along there; I would not risk being on board to save her with such a hole in; I should think she would fill immediately; not prudent to remain on board, with ebb tide, and one-third of way across the river, and slight breath of air; nobody could save her; followed water since 1812, in all capacities.

[141] Being cross-examined: Doubtful whether vessel could get out from pier 12 with wind too light for steerage-way; vessel about pier 12 when surveyed; had some corn; she had discharged her cargo; wound above water; had planks nailed on wound; extended about five feet down from deck; wouldn't sink immediately; with flour on board will fill to the deck; corn will sink.

[142] The libellants then rest for the present, and the claimants call:

Michael Bunt: Steamboating; board Henry Clay; been engaged 12 or 13 years; sail vessel about 8 years; board Steamboat Isaac Newton at time of the collision; wheelsman; it was not my watch to be at the wheel; duty to attend head-line, and get it on forward top; stood on forward top up over forward-deck, 10 feet down, and 20 feet from stern of the boat; stood starboard-side; saw the vessels;

[143] harbor thick with vessels that morning, up as far as around Dey Street; no place where we could get in conveniently, except where we came in; had to come around the brig's stern; boat slewed before we came in; came round the brig's stern, and headed up the river, then stopped right under the brig's stern, before we saw her; then, on the turn, stopped her as soon as we saw her; pilot hailed, wanted to know where he was going; told him to shove his

[144] helm hard down; no answer; I could see the helm; nobody at helm after pilot hailed; I saw a man run aft and shove the helm hard down; he kept it there a few minutes till she began to come up in wind; then shoved it back again; she felt it; pilot sung out, why he didn't shove it down, and keep it there; he shoved it hard down again, just before she came foul of the boat; he

[145] shoved it up again, and it was so when she struck; the steamboat was stopped before collision; could tell, by engine being stopped; was not working; there was backward motion, and sternway before striking; wind south-southeast, as near as I could calculate; blew off the land-wind enough for vessels to go against ebb-tide 2 and 2½ knots an hour; saw vessel going up boom to westward; she was this side of river; bowsprit of schooner

[146] touched our rail first 10 feet aft of our stern on starboard side of the steamboat; split our rail; her flying jibboom tore a small door off the hinges; starboard side-door edge of forward top, right under from where we stood, not a foot from starboard side or rail; the schooner's hull was then struck on starboard bow knightheads, say three feet from stern of schooner; could not tell exactly; after striking steamboat went ahead; went ahead to avoid getting

[147] foul of ship astern; ship astern; tide ebb, five or six knots; the effect was dangerous; we had 300 or 400 passengers. Steamboat's berth was at pier 16, and has been for 10 or 12 years; other boats, Sound boats, ferry boats, and had berths near by; after

Captain Mark Perry: Hero had little wind, not enough for steerage-way, not enough to get her round, but enough to keep her on her course.

Jesse Hoyt: One of the firmof J. M. Hoyt & Sons; sold flour to Mr. Lord, and bought the corn for his account, lying at foot of Liberty Street, south side of pier; flour was put on board; saw her there at the time it was shipped.

Being cross-examined: Lying at pier fifteen.

[161] And thereupon the testimony was closed, and the causes were thereafter summed up by the respective counsel, and submitted to his Honor, the said District Judge, who, on the day of 1851, made his separate order in each cause.

We consent that the foregoing case be substituted and used on appeal, in place of the Judge's minutes of the testimony, taken on the trial of these causes in the District Court.

C. VAN SANTVOORD,
P'r Libl't Lord.

[162] HENRY B. COWLES,
P'r Cl't, &c.

(Endorsed): U. S. District Court, Southern District of N. Y.

AUGUSTUS LORD, *v.* The STEAMBOAT ISAAC NEWTON, Her tackle, &c. } Case to be transmitted on appeal.

C. VAN SANTVOORD,
for Lib'llts.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Monday, the third day of November, in the year of our Lord, one thousand eight hundred and fifty-one.

Present. The Honorable Andrew T. Judson, District Judge.

AUGJSTUS LORD, *v.* The STEAMBOAT ISAAC NEWTON, Her tackle, &c. } Suit for collision.

[163] This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises. It is now ordered, adjudged, and decreed by the Court that the libel be dismissed with cost.

ANDREW T. JUDSON.

Final Decree. Filed 3d Nov., 1851.

C. VAN SANTVOORD,
P'r for Lib't.

J. B. COWLES,
P'r for Cl't.

U. S. District Court.

AUGUSTUS LORD,
v.
The STEAMBOAT ISAAC NEWTON,
Her tackle, &c.

You will please take notice that Augustus Lord, the libellant in this cause, appeals from the whole and every part of the decree made
[164] herein on the third day of November instant, dismissing the libel with costs to the next Circuit Court of the United States, to be held in and for the Southern District of New York.

Yours, &c. C. VAN SANTVOORD,
Pr. Libellant.

N. Y., Nov. 15, 1851.

To GEO. W. MORTON, Esq.,
Clerk.

H. B. COWLES, Esq.,
P'r for Cl't.

Notice of Appeal. Filed Nov. 17, 1851.

Circuit Court of the United States, for the Southern District of New York.

AUGUSTUS LORD, Appellant,
v.
The STEAMBOAT ISAAC NEWTON,
Her engine, tackle, &c.
DANIEL DREW,
Claimant & Appellee.

[165] To the Honorable, the Circuit Court of the United States, for the Southern District of New York.

The petition and appeal of the above-named appellant showeth, that on or about the sixteenth day of August, in the year one thousand eight hundred and fifty, Augustus Lord, the Appellant above named, filed his libel in the District Court of the United States, for the Southern District of New York, against the Steamboat Isaac Newton, her engine, tackle, apparel, and furniture, and against all persons
[166] lawfully intervening for their interest therein, in a cause civil and maritime of damage from collision, in which said libel, it is in substance alleged, among other things, that on the sixteenth day of July, 1850, the libellant shipped on board the Schooner Hero, at the Port of New York, bound for Portsmouth, five hundred barrels of flour, and fifteen hundred and sixty-four bushels of corn,
[167] and that on the seventeenth day of July, one thousand eight hundred and fifty, the said steamboat Isaac Newton, through the negligence and fault of the persons in charge of the said

steamboat, as alleged in said libel, came into collision with said Schooner Hero, with said flour and corn of said libellant on board of her, and that the damage to said corn and flour sustained by the libellant, by reason of said steamboat having been run afoul of and into said schooner, amounts to the sum of two thousand five hundred
[168] and seventy-six dollars and seventy-one cents, besides interest from the seventeenth day of July, one thousand eight hundred and fifty, and in which it is prayed among other things, that the District Court would be pleased to pronounce for the damage aforesaid, and to condemn the said steamboat, her engine, tackle, apparel and furniture, and all persons intervening for their interest therein with costs, as by said libel will appear, to which, for the con-
[169] tents thereof, this appellant asks leave, for greater certainty, to refer.

That process was issued against said steamboat, and the said steamboat attached, and thereafter, on or about the twenty-first day of September, one thousand eight hundred and fifty, Daniel Drew, the claimant aforesaid, having executed the necessary stipulations
[170] for costs and value, filed his claim and answer in said District Court, alleging in substance that the said collision arose through the fault and negligence, or insufficiency, of the persons in charge of said schooner, and without any fault on the part of the steamboat, and praying that said District Court would be pleased to pronounce against the libel aforesaid, and to condemn the said libellant in costs, as will more fully appear on reference to said
[171] answer, and to which, for the contents, this appellant asks leave to refer.

That on the same 21st of September, A. D. 1850, a general replication was filed to said answer; and that thereafter, the said cause came on to be tried, and to be heard before the honorable Andrew T. Judson, sitting as District Judge, in the District Court, in and for the Southern District of New York, on the 23d day of October, A. D. 1851, and the trial was continued through the 24th and 25th
[172] days of said October, and on the 30 and 31st days of said October, the same was heard on the allegations, testimony, and proof adduced by the respective parties; and thereafter, on or about the third day of November, A. D. 1851, the said judge made a decretal order or sentence, that the libel be dismissed with costs.

And this appellant is advised, and insists, that the said decree is erroneous, inasmuch as the said libellant was entitled to recover of
[173] the said steamboat his said damages, and to have had a decree therefor, as prayed in his said libel.

And this appellant, for this and other reasons, appeals from the whole of said decree pronounced on or about the third day of November, A. D. 1851, to the next Circuit Court, to be held in and for the said Southern District of New York, and he prays that said de-

cree, with the documents and proceedings in said cause, may be sent
[174] to the said next Circuit Court, to be held as aforesaid. And that the said Circuit Court will proceed to hear the said cause anew (the appellant intending and hereby electing, to have a new trial and make new allegations, and to seek a new decision on the facts). And this appellant further prays, that the said decree, and every part thereof, may be reversed and annulled, and held for nought, and such other decree thereupon made as to the said Circuit Court shall seem just, and that this honorable Court would
[175] be pleased to pronounce for the damages aforesaid, and otherwise right and justice to administer in the premises, and also to condemn said steamboat and the parties intervening, for their interest therein, in costs. And this appellant will ever pray.

Dated New York, Nov'r 20, 1851.

C. VAN SANTVOORD,
P'r for Lib't and Ap't.

Petition for appeal, filed Nov. 20, 1851.

Southern District of New York, *ss.*

John Shortall, of the City of New York, being sworn, says, that on the 20th day of November instant, he served a copy of the within petition of appeal on H. B. Cowles, Esq., Proctor for the appellee, therein named, by delivering the same to him in person, at his office in this city, on that day.

Sworn before me, Nov. 20, 1851.

CHAS. ELIOT SCOVILLE,
U. S. Com'r.

Circuit Court of the United States of America.

For the Southern District of New York, in the Second Circuit.

[176] AUGUSTUS LORD, Libellant and Appellant, *v.* The STEAMBOAT ISAAC NEWTON, her tackle, &c., DANIEL DREW, et al., Appellees. } Bond for Costs.

Know all men by these presents, that we, Jesse Hoyt and John H. Redfield, are held and firmly bound unto the above-named appellees, in the sum of five hundred dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and
[177] administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-one.

Whereas, the above-named libellant and appellant has prosecuted

an appeal to the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, to reverse the decree rendered in the above-entitled suit, by the Judge of the District Court of the United States, for the Southern District of New York:

Now therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and
[178] answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise, the same shall be and remain in full force and virtue.

JESSE HOYT, [SEAL.]
JOHN H. REDFIELD. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 24 day of Novem'r, 1851, before me,

JOSEPH BRIDGHAM,
U. S. Com'r.

Bond for costs, filed Nov. 24, 1851.

United States of America, Southern District of New York, *ss.*

Jesse Hoyt and John H. Redfield, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars, over and above all his just debts and liabilities.

JESSE HOYT,
JOHN H. REDFIELD.

[179] Sworn to this 24th day of Nov., A. D. 1851, before me,

JOSEPH BRIDGHAM,
U. S. Com.

8. 360. 94. U. S. Circuit Court. Augustus Lord, libellant and appellant, *v.* the Steamboat Isaac Newton, her tackle, &c., Daniel Drew, et al., claimants and appellees. Apostles. C. Van Santvoord, Proctor for lib'lt and appel. Filed September 6, 1852.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Friday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

AUGUSTUS LORD,
Libellant and Appellant,
v.
The STEAMBOAT ISAAC NEWTON, her tackle, &c.,
Claimants and Appellees.

This cause coming on to be heard on the appeal from the District Court,

Mr. Benedict reads the evidence below, on the part of the libellant and appellant.

Mr. Cowles reads the evidence below, on the part of the resp'ts and appellees.

[For map, see original, page 66.]

Circuit Court, U. S.

AUGUSTUS LORD
v.
The NEWTON.

We admit that annexed is a correct map, on the scale therein designated of the piers laid down thereon, as the same were in July, 1850, the same having been copied from a map of the City of New York, surveyed and drawn by John F. Harrison, Civil Engineer, and published by M. Dripps, N. Y. 1851, and that the piers, Nos. 14, 15, 16, 17, 18, 19, 20, are of the length respectively, as therein stated.

C. VAN SANTVOORD,
Proctor for Libell't.
HENRY B. COWLES,
Proctor for Respondent.

NEW YORK, Sept. 14, 1852.

The libellant having appealed from the decree made in favor of the respondent, the claimant of said steamboat, in the District Court of the United States, for the Southern District of New York, the cause came on to be heard anew in this Court, before the Honorable Samuel Nelson, one of the Associate Justices of the Supreme
[2] Court of the United States, at a Circuit Court held for the Southern District of New York, at the City of New York, on the twenty-third day of September, 1853.

And on the hearing of the cause, the libel, answer, and replication, and petition and notice of appeal filed in said District Court, having been read, the counsel for the respective parties read in evidence the testimony produced by them respectively, on the trial of said cause, in the District Court, as contained in the apostles sent to the
[3] Circuit Court aforesaid, from said District Court, on appeal to said Circuit Court.

And the counsel for the libellant, at the hearing in the Circuit Court, produced the following further and additional testimony to that contained in and read from said apostle.

A map and the stipulation thereon, of which annexed are copies marked Schedule H.

He also read in evidence, an extract from Tide Table, on maps of New York Bay and Harbor, made under direction of F. R. Hassler Superintendent of Survey of Coast of the United States, and pub i shed in 845, as follows:

Stations.	First Quarter.		Second Quarter.		Third Quarter.		Flood or Ebb.	
	Direction.	Rate.	Direction.	Rate.	Direction.	Rate.	Direction.	Rate.
[4] Flood } At junction of North and East River.	N. 11¼ "E	1.0	N. 24½" E.	1.8	N. 15° E.	1.8	W. 15 E.	1.0
Ebb, }	S. 68° W.	1.6	S. 112½° W	2.4	S. 16° W.	2.4	S. 16° W.	1.5
Flood } In the East River.	N. 68° E.	2.0	N. 68° E.	3.0	N. 68° E.	2.0	N. 61° E.	1.6
Ebb. }	S. 56° W.	1.2	S. 56° W.	3.7	S. 56° W.	2.7	S. 56° W.	2.0

with the note underwritten thereon, as follows:

"The rates are in miles per hour. The observations have been made, as far as practicable, when the influence of the wind was small.

[5] And then he read in evidence, the deposition taken in this cause, and the case of Jonathan Crockett and others, against the same steamboat, Isaac Newton, for damages growing out of the same collision, under the stipulations thereunto underwritten of Edward L. Van Kenren, Henry B. Craig, and Marcellus Getchell, as follows.

U. S. Circuit Court.

JONATHAN CROCKETT et al.
v.
The Steamboat ISAAC NEWTON.

AUGUSTUS LORD
v.
The Steamboat ISAAC NEWTON.

Southern District of New York, *ss.*

Edward L. Van Kenren, being duly sworn as a witness for the appellants herein, says: I am pilot of the Steamboat Commerce, en-
[6] gaged in towing on the North River; I have been pilot of steamboats running between Albany and New York, for ten years, and have been first pilot for six years, and in charge of a steamboat engaged in towing. I have had occasion frequently to bring in boats to Courtlandt Street, and from the East River, round to Courtlandt Street, and so up to the North River. I should think the ebb tide would run about opposite Courtland Street, about two miles and a-half an hour, with the wind to the northward, and this
[7] on the strength of the tide. The first and last run is not quite so much at the junction of the North and East River, between the Battery and Governor's Island. I think the tide is less, a quarter of a mile less in an hour. I am speaking of the North River tide, at the junction of the East and North Rivers. I think the tide in the East River, is about three miles an hour; in the East

River tide at its juncture with the North River. I don't know as I ever knew the tide in the North River opposite Courtlandt Street to
[8] exceed two miles and a half an hour, not much more than that. That is the rate out in the middle of the river. In shore it is not so strong, till the last of the ebb, and then it is stronger in shore than it is in shore any other time of the tide. After two-thirds ebb, it begins to slack in shore. I navigated sloops and schooners in this harbor for about fourteen years, before I was pilot of steamboats.

On being cross-examined, the witness said—I never tried the tide
[9] at either of the points named, with a log. I have tried it with a time-piece, as near as we could tell the miles while drifting in a schooner, and a sloop with no wind. I have tried it in this way all along the City of New York, and elsewhere on the river, as near as we could guess at the miles. It is upon this, that I form my opinion as to the strength of the tide. The flood tide begins to make up in shore while the tide runs down in the middle of the river.

And on being re-examined the witness said:

[10] On bringing our tows to, we are obliged to make calculations as to the strength of the tide, and so in clearing vessels and navigating steamboats. I judge of the difference between the strength of the tide at the junction, and opposite Courtlandt Street, from its effect upon any tows in navigating around the Battery.

And on being further cross-examined, he said, I never timed it with any time-piece, there at the junction.

E. L. VAN KENREN.

Sworn before me, the 25 Sept'r, 1852.

WILLIAM BRUORTON,
Commissioner of Deeds.

Henry B. Craig being duly sworn as a witness for the appellants
[11] herein, says: I am a boatman, and have been for 14 years, on the North River, and about the harbour. I am now pilot of the Steamboat Indiana, engaged in towing between Albany and New York; we leave boats all the way around from Christopher Street to Whitehall Slip, on the East River, and foot of Broad Street. I have had occasion to observe the strength of the tide at the foot of Courtlandt Street, North River, and at the junction of the East and North River; I should think the rate of the ebb tide off Courtlandt
[12] Street would be from two miles to two miles and a half an hour, and at the junction it may be a little less; I mean at the junction of the East and North Rivers. At the junction there is an eddy formed, and that is the reason the tide is not so strong there, but a little further down, where the two tides come together there it is very strong, stronger than either is above. I don't

know that I ever knew the tide to exceed two miles and a half at the foot of Courtlandt Street, North River, at the strength of the
[13] ebb. A common ebb tide, without any wind, I think, is not over two miles. I have drifted it often.

On being cross-examined, he said: I never timed the tide opposite the city here with a log. I have, with a time-piece, while drifting along. I have made calculations with a time-piece, estimating the miles as we went along, without any accurate measurement. I remember doing this along the city here at different times, but I
[14] can't say when. When I say that I never knew the ebb tide to exceed two miles and a-half an hour, I mean by this measurement. It is from drifting sailing sail-boats and steamboats that I judge of the strength of the tide.

HENRY B. CRAIG.

Sworn before me, this 25 Sept., 1852.

WILLIAM BRUORTON,
Commissioner of Deeds.

We consent that the foregoing depositions, as sworn to, be read upon the trial of the above causes, with like effect as if taken before a Commissioner of this Court.

HENRY B. COWLES,
Proctor for Appellee.

September 25, 1852.

U. S. Circuit Court.

JONATHAN CROCKETT et al.
v.
The STEAMBOAT ISAAC NEWTON.

AUGUSTUS LORD
v.
The STEAMBOAT ISAAC NEWTON.

Southern District of New York, *ss.*

Marcellus Getchell, being duly sworn as a witness for the appellants herein, says—I was a hand on board the Hero, at the time of this collision; we first began to haul out about sunrise; the wind then was south; when we first began to haul, the wind was light, just enough to give the vessel steerage-way; we hauled her out with lines and a windlass; she had touched on the bottom; we started her, stern fore-
[16] most, till we got her afloat, then we winded her round; she was then at the end of pier 15; we then hoisted her mainsail and two jibs, and shoved her off from the wharf by a setting-pole and an oar; the Captain took the helm when we shoved off from the wharf; the boom was off on starboard side when we shoved off from pier 15; the eddy tide took her up against pier 16; we did not fetch

up hard, and damaged nothing; we then shoved her off pier 16 with the setting-pole and oar; we shoved her just clear of the wharf, as
[17] far as we could, with the pole; I did not see the S. B. in sight at this time; we then took in our setting-pole and oar, and put them in the beckets; we then hauled in our lines and coiled them up; there were three lines, I think, and we had the bights of them out two or three times; we then loosed our foresail; the foresail was stopped up, stopped round the boom; by stopped up, I mean tied up with short lines; the Hero, during this time, was making off the piers, across the tide, under the mainsail and two jibs; she kept
[18] a course about S. W. and did not sway round; after we got our foresail unstopped, we hoisted it up, the throat of it; we were swaying the peak up when the S. B. struck; the S. B., when I first saw her, had got pretty close to us, coming head on; after she struck she backed off astern, across the tide; the Captain was at the wheel all the time, from the time we left the pier until about the time the S. B. struck us; I was aft at the time the S. B. struck; we all left
[19] the foresail about the time the S. B. struck, and ran aft; there were some vessels at the end of the long pier, next below pier 15; when we began to hoist the foresail we were ¼ way across the river; we had then got out clear of the vessels at end of the long pier, below pier 15; when I went aft, just before the collision, the helm was hard down in the labecket; hard down is hard a starboard; the Captain, just before the collision, left the wheel and went forward; the helm was not taken out of the becket until after the S. B.
[20] struck us; Maine boys begin to follow the sea at 10, to 12 and 13; there was wind enough as we were standing out, to keep our course and avoid other vessels; there was not wind enough to stay the vessel, that is, to get her about; it was ½ to ¾ of an hour from the time we pushed off pier 15, till the collision; we often sail the schooner under a mainsail and two jibs.

Cross-examined.

[21] Q. Were you sworn as a witness, on the trial of this cause in the District Court?

A. Yes, sir; last fall.

Q. Do you mean, by your testimony taken to-day, to alter or vary from the testimony you gave in the cause in the District Court?

A. No, sir; I was 19 years of age the ninth day of last July; I have been boating between six and seven years, in lime coasting, between Rockland to Boston, and from Rockland to New York. The crew of the Hero, at the time of the collision, consisted of five; the captain, mate, one man before the mast, a passenger, and cook; the
[22] passenger was working his passage: he was a seaman; his name was Lorenzo Wait; he lived in Rockland; as nigh as I can remember, I should say the collision was about seven o'clock in the forenoon; it was ebb tide at the time of collision, and about half ebb when we began to haul out; I don't know as it was quite half

ebb when we began to haul out, but very nigh it; I should think we were about one-third of the way across the river when the collision
[23] took place; we had not any sails up when we winded the Hero around the end of pier 15; we hoisted the mainsail and two jib before we shoved clear of pier 15; when we fetched up against pier 16, the starboard side of the Hero, a little on the quarter, struck the pier; we struck the south side of pier 16, near the end of it; the Hero struck the southern corner of the end of the pier; the eddy was taking her sideways when we struck; after leaving pier 15, we seen she was going to strike pier 16, and stood with our poles and
[24] oar ready to shove off; I think we were quarter of the way across the river when we began to hoist the foresail; all hands but the Captain were engaged in hoisting the foresail; I stood on the side of the mast while hoisting and swaying up the the foresail, on the starboard side of the mast; I faced aft; the Hero was then pointing southwest; I should think the Hero did not go about after leaving pier 16, before the collision; as near as I could judge, I should say the river was a little over a mile at the of the collision;
[25] after we got clear of pier 16, the Hero pointed to the southwest, and continued to do until the collision took place.

MARCELLUS GETCHELL.

Sworn to before me, this 16th day of Sept'r, 1852.

JAS. W. HALE,
Comm'r of Deeds.

We consent that the foregoing deposition, as sworn to, be read upon the trial of the above cause, with like effect as if regularly taken before a Commissioner of this Court.

HENRY B. COWLES,
Proctor for Respond's.

Sept. 16, 1852.

And therewith the evidence being closed, the cause was summed up by the counsel for the respective parties, on the twenty-fourth
[26] and twenty-sixth days of September, 1853, and submitted to his Honor the Associate Justice, who, on the day of one thousand eight hundred and fifty-four, made his decree herein.

I consent that the foregoing case, and the map referred to therein, be filed with the Clerk of the Circuit Court, no amendments being proposed thereto.

H. B. COWLES,
Proctor for Appell'ts.

N. Y., November 15, 1854.

United States Circuit Court, Southern District of New York. Augustus Lord, Libellant and Appellant, *v.* the Steamboat Isaac

Newton, her tackle, &c. Daniel Drew, Claimant and Appellee. Case to be transmitted on appeal containing statement of testimony in Circuit Court.

C. VAN SANTVOORD,
P'r Appell't.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Saturday the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

AUGUSTUS LORD,
Libellant and Appellant,
v.
The STEAMBOAT ISAAC NEWTON, her tackle, &c.
Resp'ts and Appellees.

This cause being still on hearing,

Mr. Charles L. Benedict is heard on the part of libellant and appellant.

Mr. Van Santvoord is heard on same side; Mr. Cowles is heard on part of respondents.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Monday the twenty-sixth day of Sept., in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

AUGUSTUS LORD, Libellant and Appellant,
v.
The STEAMBOAT ISAAC NEWTON, her tackle, &c.,
Resp'dts and Appellees.

This cause being still on hearing,

Mr. Cowles concludes on the part of the respondents.

Mr. Benedict is heard in reply.

Cur. adv. vult.

At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the City of New York, on Monday the

sixth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

The STEAMBOAT ISAAC NEWTON, her tackle,
DANIEL DREW, Claimant and Appellee,
ads.
AUGUSTUS LORD, Libellant and Appellant.

This cause having been heard on the appeal on the proofs and allegations of the parties, and due deliberation being thereupon had; on motion of Henry B. Cowles, Proctor for the claimant and appellee, it is ordered, adjudged, and decreed, that the decree in the District Court, in this cause, be in all things affirmed, with costs; and on like motion, it is ordered, that, unless an appeal be taken from the decree of this Court within ten days, the appellee have execution, and that the stipulators cause their stipulations to be fulfilled.

Circuit Court of the United States, for the Southern District of New York.

AUGUSTUS LORD,
Libellant and Appellant,
v.
the STEAMBOAT ISAAC NEWTON,
her tackle, apparel, and furniture,
DANIEL DREW, claimant and respondent.

The above-named libellant, Augustus Lord, hereby states to this honorable Court, that he appeals, and he hereby appeals to the Supreme Court of the United States, from the whole decree entered, in the above-entitled cause, on the sixth day of November, 1854, with the Clerk of this Court, and the said appellant prays, that the same may be sent to the Supreme Court of the United States.

C. VAN SANTVOORD,
Proctor for Libl't and Appellant.

NEW YORK, Nov. 9th, 1854.

To J. W. NELSON, Esq.
Clerk.

(Endorsed): Fol. 88; U. S. Circuit Court, Southern Dist. of N. Y.; Augustus Lord, lib't and appellant, *v.* the Steamboat Isaac Newton, &c., Daniel Drew, claimant and respondent; Notice and prayer of appeal; C. Van Santvoord, Proctor app'lt. Filed Nov. 9, 1854.

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Supreme Court of the United States.

AUGUSTUS LORD,
Libellant and Appellant,
v.
the STEAMBOAT ISAAC NEWTON,
her tackle, apparel, and furniture,
DANIEL DREW, claimant and respondent.

To the Honorable the Supreme Court of the United States.

The petition and appeal of Augustus Lord, the above-named libellant and appellant, respectfully showeth, that on the sixteenth day of August, 1850, he filed his libel in the District Court of the United States, for the Southern District of New York, against the Steamboat "Isaac Newton," her tackle, apparel, and furniture, in a cause civil and maritime, for the recovery of damages sustained by him to a cargo of flour and corn, laden on board the Schooner "Hero," by collision with the said Steamboat "Isaac Newton," on the Hudson River, in the State of New York, to the amount of two thousand five hundred and seventy-six dollars and seventy-six cents, besides interest from July seventeenth, 1850, exclusive of any costs. That the said Steamboat "Isaac Newton," was arrested upon process issued upon said libel, and was discharged on the said Daniel Drew's filing his claim, and entering into stipulation; and the said Daniel Drew filed his claim and answer to said libel, and your petitioner replied thereto, and such proceedings were had in the said cause that on the third day of November, 1851, a final decree was made and pronounced therein, wherein it was adjudged and decreed by the Court that the libel be dismissed with costs.

And that after such final decree, your petitioner duly appealed therefrom to the Circuit Court of the United States, for the Southern District of New York, and the said cause was removed thereby into the said Circuit Court, and there tried anew; and such proceedings were had in the said Circuit Court that afterwards, on the sixth day of November, 1854, the said Circuit Court made a final decree in the said cause, whereby it was decreed, that the said decree of the District Court be in all things affirmed, with costs, &c.; which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed, and a decree made for the damages prayed by this libellant, in his libel and costs.

Wherefore, this appellant appeals from the whole of said decree of said Circuit Court, and every part thereof, to the Supreme Court of the United States, and respectfully prays, that the said decree of the said Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States, without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that

the said decree of the Circuit Court, and every part thereof, may be reversed, and a decree made for the damages prayed by this libellant in his libel, with interest and costs, or such other decree as to the said Supreme Court shall seem just.

And your petitioner will ever pray, &c.

AUGUSTUS LORD.

Dated NEW YORK, Nov. 10th, 1854.

(Endorsed): Supreme Court of the United States; Augustus Lord, libellant and appellant, *v.* the Steamboat "Isaac Newton," her tackle, &c.; Daniel Drew, claimant and respondent; Petition and Appeal; C. Van Santvoord, P'r for Appellant. Filed Nov. 10, 1854.

Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

AUGUSTUS LORD, Libellant and Appellant,
v.
The Steamboat "ISAAC NEWTON," her tackle, apparel, and furniture,
DANIEL DREW, Claimant and Appellee.

Bond for costs.

Know all men by these presents: That we, John H. Redfield and Jesse Hoyt, of the City of New York, are held and firmly bound unto the above-named Daniel Drew, the appellee, in the sum of five hundred dollars, to be paid to the said Daniel Drew; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas, the above-named Augustus Lord has prosecuted an appeal to the Supreme Court of the United States, at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit, by the Judge of the Circuit Court of the United States for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that, if the above-named Augustus Lord shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN H. REDFIELD, [L. S.]
JESSE HOYT. [L. S.]

Sealed, and delivered, and taken, and acknowledged, this the 10th day of November, 1854, before me,

R. E. STILLWELL,
U. S. Com.

United States of America, Southern District of New York, *ss.*

John H. Redfield and Jesse Hoyt, of the City of New York, being duly sworn, severally depose and say, that they, and each of them, are residents and householders in the City of New York, and that are worth the sum of one thousand dollars over and above all just debts and liabilities.

JOHN H. REDFIELD.
JESSE HOYT.

Sworn to, this tenth day of Nov'r, A. D. 1854, before me,
R. E. STILLWELL,
U. S. Comm'r.

Upon the above evidence I approve the sufficiency of the within-named sureties to this bond.

SAM'L R. BETTS.

NEW YORK, Nov. 10, 1854.

U. S. Circuit Court; Augustus Lord, libellant and appellant, *v.* The Steamboat "Isaac Newton," her tackle, &c., Daniel Drew, claimant and appellee; Bond for costs on appeal to U. S. Supreme Court; C. Van Santvoord, Proctor for Appellant; Filed this 10th day of November, 1854.

By the Hon'ble Samuel R. Betts, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To David Drew:

Whereas Augustus Lord, libellant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, made in favor of you, the said Daniel Drew, claimant of the Steamboat Isaac Newton, her tackle, apparel, and furniture, against the said Augustus Lord, stating that the said decree is erroneous, and praying that the same may be reversed, and the cause heard anew.

And the said Augustus Lord having duly entered his said appeal to the Supreme Court of the United States, and filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court, at the City of Washington, on the tenth day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the City of New York, in the Southern District of New York, in the Second Circuit, the tenth day of November, in the year of our Lord 1854, and of the Independence of the United States the seventy-ninth.

SAM'L R. BETTS.

(Endorsed): U. S. Supreme Court; Augustus Lord, Libellant and